



OFFICE OF THE UNDER SECRETARY OF DEFENSE

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ACQUISITION AND
TECHNOLOGY

March 2, 1999

DP/FC

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES

DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT, ASN(RD&A)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC

DEPUTY ASSISTANT SECRETARY OF THE ARMY (PROCUREMENT), ASA(RD&A)
COMMANDER, DEFENSE CONTRACT MANAGEMENT COMMAND

SUBJECT: Compliance with the Buy American Act and Other Statutory
Restrictions on Foreign Acquisition

I am concerned by the findings of the recent audit report by the Office of the Inspector General, DoD (OIG), Project No. 8CH-5001, *Procurement of Military Clothing and Related Items by Military Organizations*, that concludes that certain Department of Defense procurements during Fiscal Years 1996 and 1997 did not comply with the requirements of the Buy American Act (41 U.S.C. 10a et seq.), implemented at Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 225.1, or the Berry Amendment (10 U.S.C. 2241, note), implemented at DFARS Subpart 225.7002. Nearly half of the solicitations and contracts examined by the OIG were found not to have incorporated or enforced the required relevant provisions or clauses prescribed by the DFARS for these statutes.

Please ensure that contracting officers review and comply with, the requirements of the Buy American Act and the Berry Amendment. Except as specifically provided in the Act or in DFARS Subpart 225.1, contracting officers must apply the requirements of the Buy American Act to supply contracts exceeding the micro-purchase threshold and to service contracts that involve furnishing of supplies when the supply portion exceeds the micro-purchase threshold. Except as specifically provided in the statute or DFARS Subpart 225.7002, contracting officers must apply the Berry Amendment to actions at or above the simplified acquisition threshold. These restrictions also apply to orders placed under a Federal Supply Schedule (FSS) contract. The General Services Administration (GSA) is not subject to the Berry Amendment and, therefore, does not impose the requirements of the Berry Amendment in a FSS contract. Contracting officers shall not place orders under an FSS contract if the procurement would fail to comply with either the Buy American Act or the Berry Amendment.

Eleanor R. Spector
Director, Defense Procurement

